

[IN THE PRIVY COUNCIL.]

1945 *Present* : Lord Thankerton, Lord Goddard and Sir John Beaumont.

NARAYANAN CHETTIAR *et al.*, Appellants, and KALIAPPA CHETTIAR *et al.*, Respondents.

Privy Council Appeal No. 73 of 1944.

S. C. 61—D. C. Kandy, 239.

Partition action—Valuation of estate carrying tea—Allowance for tea restrictions—Guiding rule for allocation of lots.

In an action for the partition of an estate carrying tea on it a Commissioner can, in fixing his valuation, take into account the effect of the tea restrictions which are in operation.

The allocation of lots in a partition action is similar to the distribution of assets among partners.

A PPEAL from a decree of the Supreme Court.

W. A. Barton, K.C., and *F. Gahan*, for the appellants.

Rewcastle, K.C., and *Handoo*, for the respondents.

December 11, 1945. [Delivered by LORD THANKERTON.]

The present appeal raises a question with regard to the division of an estate in Ceylon which carried both tea and rubber on it and which had been held jointly by a certain number of people.

The action is one for partition under the Ceylon Partition Ordinance and proceeded according to the ordinary procedure beginning with an interlocutory decree fixing the shares of the parties and remitting the matter to a Commissioner to carry out the actual partition and suggest the division. A motion by the present appellants that a sale should be ordered of the whole property was rejected and the partition was ordered in its place. A report was made by the Commissioner, objections were taken to it by the present appellants, and these were disposed of by the learned District Judge. They were all disposed of and the only alteration he made in the Commissioner's Report was a modification, about which there is no dispute, to provide an adequate water supply for one of the lots.

The matter was then appealed to the Supreme Court who affirmed the conclusion of the District Judge without any difficulty.

It is now sought to bring this matter before this Board by way of the present appeal. It appears to their Lordships that this appeal falls directly within the decision which was given in 71 Indian Appeals at page 149 (*N. R. Kapur v. Murli Dhar Kapur*) for these reasons: The basis of the Commissioner's valuation has never been attacked in this case, but the passage founded on by Mr. Barton in the judgment of the District Judge contains the phrase "dead investment".

In their Lordships' opinion that passage shows clearly that the learned District Judge accepted the Rs. 44,000 as a valuation on the basis of the factory being for the time a dead investment owing to the tea restrictions.

Their Lordships in any case, in the absence of an attack on the basis of the valuation, which would raise a question of principle, are bound to assume that the valuer, valuing at the time when the tea restrictions were on, took those into account and took their effect into account in fixing his valuation.

The only other question Mr. Barton raised was with regard to the more convenient allocation, as it may be called, that it was sought to obtain before the District Judge, because it was said that the lots which the parties would have wished to have allotted would be more valuable. That is an ordinary matter which arises in every distribution of assets among partners.

It appears to their Lordships that there is no ground for distinction between the present case and a case of ordinary dissolution of partnership, and distribution of assets and accounting, as was the case in 71 Indian Appeals.

Accordingly, their Lordships are bound to come to the conclusion that the subject of the present appeal is not a proper subject for their Lordships' Board to consider, and they will humbly advise His Majesty that this appeal should be dismissed. The appellants must pay the respondents' costs.

Appeal dismissed.
